THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.5319 of 2007

Date:02.04.2007

Between:

R.Kanthamma and others.

.. PETITIONERS

AND

The District Registrar,
Chittoor and others.

..RESPONDENTS

ORDER:

The first petitioner is the wife of one Sri R.Kamalakara Naidu and petitioners 2 to 5 are their children. The second petitioner was given in adoption to one Sri B.Narayana Swamy Naidu. After the death of Kamalakara Naidu, the properties held by that family were sought to be partitioned, through a document, dated 13.03.2006. The second petitioner was also allotted a share on the ground that by that time he was given in adoption, he became entitled to it.

The document was presented before the second respondent, for registration. The stamp duty of 1% on the value of the property was paid as per Article 49-A of Schedule I-A of the Indian Stamp Act, as it applies to the State of Andhra Pradesh. The second respondent entertained a doubt as to the adequacy of stamp duty and registration charges and addressed a letter, dated 18.03.2006, to the first respondent. The latter, in turn, replied on 26.04.2006, stating that the second respondent can be treated as a member of the family despite the adoption, and that the stamp duty is chargeable at 1%.

The grievance of the petitioners is that despite the clarification issued by the first respondent, the second respondent has not registered the document so far.

Sri S.V.Bhatt, the learned counsel for the petitioners submits that the adoption of the second petitioner did not bring about any change as to his right to be allotted a share in the family of his natural parents and Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956, preserves such a right. He contends that though a superior authority like the first respondent had taken the view that accords with law, the second respondent is sitting over the matter without any basis.

The learned Government Pleader for Revenue, on instructions, submits that after receiving clarification from the first respondent, the second respondent sought instructions from the Deputy Inspector General of Registration and Stamps, Chittoor and a clarification was issued through memo, dated 21.06.2006, to the effect that the stamp duty payable on the document is 6%. He contends that the petitioner can avail the remedies provided for under the Indian Stamp Act and the Registration Act.

The short point that arises for consideration in this writ petition is as to whether the second petitioner lost his right to be allotted a share in the property held by the joint family of his natural parents, on his having been given in adoption to a different family. Answer to this, would have a bearing upon the percentage of stamp duty payable on the partition deed. If the second petitioner is to be treated as a member of the family comprising of petitioners 1, 3 and 5, the partition becomes the one “within the family” and thereby the stamp duty leviable on the document would be 1%. On the other hand, if he is to be treated as a stranger to that family, the partition could be the one “among others” and 6%

stamp duty would become leviable on the document.

It is no doubt true that on being adopted, the child, for all practical purposes, stands removed from the natural family and planted in the family that adopts it; so much so, the surname is changed and the parentage is reflected in the changed form. When it comes to the question of inheritance of the property of his natural parents, by the child, the Act made a provision for preserving his right vis-à-vis the natural family. Section 12 enlists the effects of partition. It reads as under:

> **Effects of Adoption**:- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family
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> Provided that—
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> (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
>
> (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
>
> (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

From a perusal of Clause (b) of Section 12 of the Act, it is evident that if any property had vested in the child before adoption, the adoption would not have any effect upon it. A coparcener gets his right to a share in the joint family property, by virtue of his birth. There is nothing on record to disclose that any acts or omissions, which have the effect of divesting the second petitioner of his right to a share in the natural family, have emerged. Further, the natural mother and brothers of the second petitioner

have recognized his right to a share in the joint family. The first respondent has appreciated the matter from the proper perspective and rendered his opinion. The second respondent ought to have acted on the same, instead of protracting the issue, and taking it the higher authorities, as though he is a party to an adversarial litigation.

The writ petition is, accordingly, allowed and the second respondent is directed to register and release the document by accepting the stamp duty at 1%, after ensuring compliance with the other provisions of the Indian Stamp Act and the Registration Act, within two weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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02.04.2007

Note: L.R.copy to be marked.

(B/o)

kdl